NO. 14880

United States
Court of Appeals
For the Ninth Circuit

In the Matter of
The Bridgford Company, a Corporation,
Bankrupt.

Paul W. Sampsell, Trustee in Bankruptcy for the Estate of The Bridgford Company, a Corporation, Bankrupt,
Appellant,

vs.

Hugh H. Bridgford,
Appellee.

BRIEF OF OREGON FARMER CREDITORS

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BRIEF OF OREGON FARMER CREDITORS

FOREWORD

This Court has permitted certain creditors (hereinafter referred to as Oregon Farmers) of the Bridgford Company, a bankrupt corporation, to file a brief in this proceeding as appellants. These creditors who were granted this privilege are farmers who reside in the vicinity of Ontario, Oregon, and who during

the crop season of 1948, produced, sold, and delivered to the Court appointed managers of the Bridgford Company, at its food processing plant at Ontario, Oregon, agricultural products which were processed by the Company during the season of 1948 and for which there is an unpaid balance due these farmers of approximately $100,000.00.

Creditors claims were timely filed by each of the individual farmers.

OPENING STATEMENT

Agreeing with, but supplementing the opening statement contained in the brief of appellant Sampsell, we point out that on April 25, 1947, the bankrupt filed a voluntary petition in the United States District Court for the Southern District of California, Southern Division, seeking relief under Chapter XI of the Bankruptcy Act.

The debtor remained in possession under the plan of arrangement. Mr. Bridgford, the President of the bankrupt corporation, was also one of the Court appointed managers to operate the Company's facilities for the purchase of the 1948 crop of products which was delivered to the Ontario plant and processed during the 1948 processing season and disposed of by the managers for the benefit of the bankrupt estate but was not fully paid for, leaving unsatisfied claims of approximately $100,000.00. (Referee's Findings XII R-115)

During the operation of the bankrupt estate one R.

Harold Hadley became a creditor of said estate in the principal sum of $30,000.00 and received Certificates of Indebtedness Nos. 35 to 40 inclusive, for that amount.

Hadley did not file a claim with the Referee, or present these Certificates for payment, but assigned the above described Certificates to the appellee, Hugh H. Bridgford, without any consideration, on or about November 7, 1949, whereupon Bridgford filed a claim for the face value of the Certificates (Referee's Findings No. III R-111) although he admitted he didn't pay Hadley anything for the Certificates (R-178) and further admitted that upon receiving the proceeds of the check for $25,996.40 "It was commingled with my personal funds, and has been used and spent" (R-183) and that the money was not used to pay "any old obligations of the Bridgford Company." (R-183)

Appellant Sampsell's opening brief details fully the nature of the claim filed by Bridgford and its history leading up to this appeal (pp. 4-6 Sampsell's brief) with appropriate references to the record and these matters will not be repeated here. Neither will we make any further reference to the procedural steps taken by appellant Sampsell.

ARGUMENT POINTS AND AUTHORITIES

I

Appellee, being a fiduciary, a court appointed manager under the plan, and an officer of the Court,

could not take advantage of his knowledge of the affairs of the bankrupt estate to obtain a personal advantage and profit.

Donovan & Schuenke vs. Sampsell, 226 F. (2) 804.

ARGUMENT

Having been the principal stockholder, director and officer (president) of his bankrupt corporation, and a Court appointed manager under Chapter XI, the appellee was well aware of the financial condition of the bankrupt estate, he was also well aware of how, and under what circumstances, Mr. Hadley acquired the Certificates of Indebtedness. He was in open court on November 4, 1949, when the referee announced from the bench "that he found the debtor in default and would order an adjudication." (Referee's Findings VI and VII, R-113). He also knew that the funds then under his control were the proceeds of the sale of products bought from the Oregon Farmers and that they had not been fully paid. (R-196)

When on November 7, 1949, he presented a petition to Referee Lannon for authority to pay himself the face value of the Certificates of Indebtedness, he failed to inform Judge Lannon that he took these Certificates without any consideration (R-212) or as Bridgford himself put it (R-178) "the Certificates were received with no strings attached."

We think a mere recital of the admitted facts as

outlined in the record, would compel a reversal of the decree appealed from. If authority be necessary such authority is found in the cases cited in appellant Sampsell's brief, all of which are adopted but for the sake of brevity shall not repeat, except to call attention to parts of the opinion in **Donovan & Schuenke vs. Sampsell** (226 F. (2) 804) omitted in appellant Sampsell's brief. We read in the Donovan opinion (226 Fed. (2)) at 807:

> "The duties of these corporate officers were to protect the creditors of Ridgecrest."

And further from the same page of the opinion:

> "Fiduciary obligations are imposed upon corporate officers of a concern which is insolvent. They cannot buy claims against it, deal in its stock or traffic in its property. The courts refused profit on or set aside such transactions even where bankruptcy has not intervened.
>
> 'The policy of the law is to insure fidelity of trustees to their trusts by making it impossible for them to profitably neglect or abuse them.' Bramblet v. Commonwealth Land & Lumber Co. 83 S.W. 599, 602, 26 Ky. Law. Rep. 1176, 1179.
> And the intervention of bankruptcy does not terminate his responsibility as an officer of the corporation. Even if the relationship had ended, the fiduciary capacity was not lost."

The basis of invalidity of the fiduciaries acts in the Donovan case are pale indeed compared to the studied, and deliberate acts of infidelity found in the present record where the appellee procured the trust funds to pay his individual claim without informing the Referee that he had obtained the Certificates of Indebtedness from Hadley without consideration of any kind. (R-178)

When Bridgford bought the products from the farmers he reflected the integrity of a Federal Court. It is doubtful if these farmers would have sold their products to a Company teetering on the brink of insolvency unless they felt they had the assurance of fair and honest supervision and accounting controlled by a Federal Court.

These farmers were not selling to the Bridgford Company, against the defaults of which they could protect themselves by suit and attachment in a local court, but to court appointed managers of a Company then under the control of a United States Federal Court and the farmers felt they had security against the rapacity of these self-same managers who were under the control of the court who appointed them its agents. After all, any prospect of success that the Bridgford Company (and its stockholders) might hope for depended upon the money and labor of these farmers and assuming that they would have a fair run for their efforts and contributions, they were willing to go along towards helping Bridgford salvage his company from a self-inflicted financial crisis.

Under the situation above detailed we heartily

agree with the pointed observation of Referee Lannon (R-84) where he said:

> "It would indeed be an anomalous and inequitable situation to permit Mr. Bridgford to secure a priority payment in the amount of $30,436.40 out of funds realized from the sale of produce grown by the Oregon farmers, and then leave the farmers and other creditors holding the proverbial 'bag' to the extent of more than $100,000.00 representing unpaid claims for that produce."

APPELLEE BRIDGFORD HAD THE DUTY TO INFORM THE REFEREE THAT HE RECEIVED AN ASSIGNMENT OF THE CERTIFICATES OF INDEBTEDNESS WITHOUT CONSIDERATION.

Occupying a fiduciary relationship as Bridgford was, not only prohibited him from asserting a claim in his own right for which he paid nothing, but he had a duty to inform the Referee that such a claim if presented by another party was fraudulent.

In a very recent case reported as **Larson Company vs. Wallingsford**, 136 Fed. Sup. 602, after calling attention to various sections of the Bankruptcy Act, which specify the duties of a bankrupt to assist the trustee the court wrote: (611)

> "These clauses rarely have been construed, but the duty of the bankrupt to inform the trustee of all false claims coming to his knowledge persists until he is discharged or until the final clos-

ing of administration, if discharge is granted sooner. 'The bankrupt also has sufficient standing to move to expunge a false claim, although where there is a trustee the latter, as the representative of all the creditors, should do this.' "

In Sec. 7.25, page 1014, of the same volume, the learned author says:

"Subdivision b of Sec. 7 was added by the Act of 1938 to clarify the question as to who must perform the duties prescribed by Sec. 7 where the bankrupt is a corporation. The subdivision provides that in such situations, the bankrupt's 'officers, the members of its board of directors or trustees or of other similar controlling bodies, its stockholders, or members, or such of them as may be designated by the court, shall perform the duties imposed upon the bankrupt by this Act.' "

In Goldie v. Cox, 8 Cir., 130 F 2d 690, the court at page 695 said:

"The Bankruptcy Act recognizes the necessity of assistance from the bankrupt to the trustee and creditors * * * . Where the bankrupt is a corporation, this same situation applies to officers and directors thereof."

Citing Crutcher v. Logan, 5 Cir., 102 F. 2nd said:

"The successful administration of a bankruptcy estate, of necessity requires cooperation and assistance from the bankrupt, and where, as here, the bankrupt is a corporation the assistance must come from the officers and persons employed by the corporation prior to its bankruptcy. The officers should disclose all information which they have concerning the bankrupt's affairs."

THE REFEREE, AND THE COURT, HAS POWER TO RE-EXAMINE AND SET ASIDE AN ALLOWED CLAIM AT ANY TIME DURING THE PENDENCY OF THE CAUSE.

Even if the Referee allowed Bridgford's claim based on the certificates of indebtedness in the first instance the Referee and the Court, has the power to re-examine for the purpose of determining the validity of the claim and determine the order of its payment.

In 8 C.J.S. (Bankruptcy) 1117 we read:

"At any rate, practically any matter or cause which appears to render the original order erroneous or improper will afford a sufficient ground for its re-examination."

In **Jones vs. Clower** 22 Fed. (2) 104 in a case where a duplicate claim was allowed, and later set aside and expunged, the 5th Circuit held: (106)

"The Bankruptcy Act invests courts of bankruptcy with jurisdiction to 'allow claims, disallow claims, reconsider allowed or disallowed claims, or allow or disallow them against bankrupt estates,' and provides that 'claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.' Sections 2 (2), 57k (11 USCA §§11, 93(k). The quoted provisions fully empower a bankruptcy court to inquire into the validity of any alleged debt or obligation of the bankrupt upon which a demand or claim against the estate is based. Lesser v. Gray, 236 U.S. 70, 35 S. Ct. 227, 59 L. Ed. 571."

The foregoing language is amplified in **Lesser v. Gray** 236 U. S. 70, 35 S. Ct. 227, 59 L. E. 471 where we read: (474)

"Section 2 of the bankruptcy law (30 Stat. at L. 544, chap. 541, Comp. Stat. 1913, § 9585), invests courts of bankruptcy with jurisdiction to '(2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estate; . . . * * * (10) consider and confirm, modify, or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; . . . (15) make such orders, issue such process, and enter such judgments in addition to those specifically

provided for as may be necessary for the enforcement of the provisions of this act.' "

Based on the undisputed facts in this record and the unanimous holdings of the courts the present case should be reversed.

To hold otherwise, would be to license fiduciary officers of a Federal Court in bankruptcy cases, to plunder creditors that have been imposed upon because of the standing obtained from the fiduciary capacity bestowed upon them by courts of the United States.

Respectfully submitted,
P. J. Gallagher,
Attorney for Oregon farmer creditors.